IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.60 OF 1996

Shri Mahavir Balgonda Patil, .. Petitioner
Vs
Shri Balgonda Kalagonda Patil
and ors. .. Respondents
Mr N.J.Patil, for the petitioner.
Mr T.S.Ingole, for respondent nos 1(a), 10(a), 19(c) & 10(d).

CORAM : D.B.BHOSALE,J.

DATE : FEBRUARY 16, 2005.

P.C.

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. Mr Ingole, learned counsel, waives service for the respondents. By consent, rule is heard finally.

3. By this petition, the petitioner has impugned the order dated 12.10.1994 passed by the trial Court, by which the applications-Exhibits 164 and 165 seeking amendment were disposed of. Exhibit 164-application was partly allowed whereas Exhibit 165-application was rejected. The suit is filed for partition. Admittedly, by these applications the petitioner-plaintiff sought to add some more properties as the joint family properties and the third parties who are in possession thereof. The learned Judge has rejected the application

Exhibit-165 holding that the properties, which the petitioner sought to add in the suit, were not allotted to the share of his father in the earlier partition. The earlier partition has been disputed by the petitioner. Keeping that in view and considering the overall facts and circumstances of the case, in my opinion, no prejudice whatsoever will be caused to the respondents if the amendment is allowed. If what the petitioner contends is correct, in that case the persons in possession of the properties would be necessary parties in the proceedings. Considering that, this petition is allowed. The impugned order is set aside. The petitioner to carry out amendment within four weeks from the date of receipt of this order. The trial Court is directed to dispose of the suit expeditiously. Liberty to the respondents to amend their written statement, if so advised. Rule is disposed of.

(D.B.BHOSALE, J.)

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